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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 13, 2000

NOTICE OF EX PARTE PRESENTATION

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

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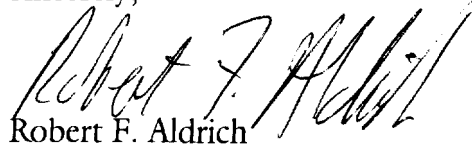
EX PARTE OR LATE FILED

Re: Pay Telephone Reclassification and Compensation Provisions
of the Telecommunications Act of 1996, CC Docket No. 96-128;
File No. NSD-L-00-34; Flying J Files Petition for Declaratory
Ruling, CCB/CPD Docket No. 00-04; In the Matter of Wisconsin
Public Service Commission, CCB/CPD No. 00-1

Dear Ms. Salas:

On December 12, 2000, Thomas Keane, Chairman, Pacific Coin, San Leandro, CA; Gary Pace, Chief Executive Officer, Midwest Communications Solutions, St. Louis, MO; Vince Townsend, Chief Executive Officer, Pay-Tel Communications, Greensboro, NC; Bruce Renard, Senior Vice President and General Counsel, Davel Communications, Tampa, FL; Ted Weerts, Executive Director, Travelers Aid Society of Philadelphia; Nicholas W. Allard, Latham & Watkins, Attorney; Albert H. Kramer, Attorney; and Robert F. Aldrich, Attorney, on behalf of the American Public Communications Council ("APCC"), had a meeting with Common Carrier Bureau Chief Dorothy Attwood. Also at the meeting were Deputy Bureau Chief Glenn Reynolds, Martin Schwimmer, and Jon Stover. They discussed APCC's positions of record in this proceeding and the need for immediate FCC action. The points addressed are outlined in the attached documents which were handed out at the meeting.

Sincerely,


Robert F. Aldrich

RFA/nw
Enclosures
cc: Glenn Reynolds
Martin Schwimmer
Jon Stover

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Supporting Public Access for Everyone: Finishing Implementation of Section 276 of the Telecommunications Act

**American Public Communications Council
December, 2000**

*I believe payphones are an integral part of our country's telecom infrastructure....
And for millions of Americans a payphone is not just a convenience, it is a lifeline.
It is a necessity for public safety.*

FCC Chairman William Kennard
October 20, 1999

I. Immediate FCC Action Is Critical to the Payphone Deployment Mandated by Congress

A. Section 276 of the Telecommunications Act of 1996 mandates widespread deployment of payphones

B. The public is losing access to payphones

- Growth of wireless is pressuring payphone deployment
- Payphone usage is changing
- The changes are creating a demographic divide - it is the “wireless-less” who most need payphones for:
 - access to social services
 - emergencies
 - basic telephone service

I. Immediate FCC Action Is Critical to the Payphone Deployment Mandated by Congress (cont'd)

C. Skewed regulation distorts competition

- The FCC has correctly and successfully promoted wireless services and required cost-based interconnection of wireless to ILECs' wireline network
- Similar follow through is required to implement the payphone requirements of the '96 Act and put payphones on a comparable competitive footing

I. Immediate FCC Action Is Critical to the Payphone Deployment Mandated by Congress (cont'd)

C. Skewed regulation distorts competition (cont'd)

- In setting the dial-around compensation rate, the Commission explicitly assumed PSPs would collect on every call in order to realize cost recovery, but a flawed *payphone compensation* system has limited PSPs to collecting on about 65% of dial-around calls
- *ILEC payphone interconnection rates* have not been reduced to cost, as required by the 1996 *Payphone Order*, and continue to be a source of subsidy for other ILEC services -- even though payphones and wireless compete for interconnected minutes on the wireline network
- Without follow-through on cost and revenue issues:
 - providers are accelerating their removal of payphones
 - providers cannot upgrade service or invest in innovative products such as public data terminals

I. Immediate FCC Action Is Critical to the Payphone Deployment Mandated by Congress (cont'd)

D. How to Ensure Continued Availability of Payphone Service?

- Clarify that existing dial-around compensation rules require the facilities based carrier to identify the payer for every call
- Commit to quickly amend rules to simplify collection of compensation
- Complete pending Wisconsin payphone interconnection rate proceeding
 - reiterate that all elements of payphone interconnection are subject to the *Payphone Order's* cost based pricing requirements
 - emphasize that payphone providers are not mere business customers, but competitors of ILEC payphone divisions entitled to cost based interconnection rates

II. The Public Is Losing Access to Payphones

A. Growth of wireless is pressuring payphone deployment

- In 1999, there were more than 86 million wireless subscribers -- 32% of the U.S. population -- up from 20% in 1997. *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services (August 3, 2000)*

B. The general need for payphones remains

- Wireless service is not available everywhere
- Wireless service sometimes fails
- Everyone needs a payphone sometimes

C. The removal of payphones creates a demographic divide

- The “wireless-less” need payphones
 - 87% of people with a household income of \$10,000 - \$20,000 do not own cell phones

THE DEMOGRAPHICS OF CELLULAR PHONE OWNERSHIP

<u>Category</u>	<u>Percent of Persons Owning Cellular Phones</u>
Household Income over \$75K	52.8
Household Incomes \$10K-20K	12.7
Household Incomes under \$5K	7.8
Urban	31.7
Suburban	54.4
Rural	14.0

II. The Public Is Losing Access to Payphones (cont'd)

C. The removal of payphones creates a demographic divide (cont'd)

- People without wireless have a *greater* need for payphones
 - to reach help in emergencies
 - to reach social services, including those designated for 211 access
 - to reach bi-lingual services
 - to substitute for basic local service
 - » 5% of households have no wireline service
 - » 10% of African-American and Hispanic households have no wireline service
 - » 23% of rural very poor households have no wireline service
- Payphone disconnections have hit low-income and high-minority areas hardest
 - for example in Maryland 40% of payphone disconnections have occurred in high-minority areas, which have only 24% of the population

**"800" Social Service Calls from one Chicago Area Payphone Network
July 1999 to June 2000**

<u>Party Called</u>	<u>Purpose</u>	<u>Number of 800 Calls</u>
Illinois "Link" Help Desk	Food Stamps, Income Assistance, etc.	47342
Illinois Dept of Human Services	Social Services	3537
Social Security	Information on Social Security Programs	3051
Illinois Department of Corrections	Weekly Check-Ins, etc.	1908
Cook County Inmate Information Center	Information	829
CTA Para-Transit Operations	Disabled Services, Bus Schedules	574
Illinois Dept. of Human Services	Social Services	514
Bureau of Child Support-Help Line	Cook County Inquiries	479
Illinois Dept. of Public Aid, Child Support Enforcement Help Line	Obtaining Support Payments in Springfield Region	304
Illinois Dept. of Human Services	Illinois Relay Service	285
Illinois Dept Of Revenue	Taxpayer Assistance	259
Veterans Benefits	Information and Claims Assistance	229
DCFS-Dept of Children & Family Services	Information	144
Illinois Dept. of Public Aid, Bureau of Kid Care	Information	106
Homeless Hotline	Assistance with Shelter	101
Illinois Dept of Health & Human Services	Hotline	74
Illinois Dept. Human Services	Illinois Relay Service	58
Illinois Dept of Public Health	Central Complaint Registry	57

Aids Hotline	Information	39
Drug Hotlines	Information	37
Social Security Administration, Illinois	Information	30
Illinois Poison Control Center	Emergency Information	14
Illinois Dept. of Public Aid, Child Support Enforcement Help Line	Obtaining Support Payments in Marion Region	14
Illinois Dept. of Public Health	WIC Help Line (Women, Infants, and Children) Nutrition	12
HIV / Aids / Testing -- Confidential	Information	12
Illinois Dept of Health & Human Services	Domestic Violence Hotline	11

**"800" Numbers From One Chicago Area Payphone Network
Offering Non-English Service
July 1999 to June 2000**

<u>Party Called</u>	<u>Number</u>	<u>Language Offered</u>	<u>Number of Calls</u>
Prepaid Card	1-800-515-9472	English and Spanish	33,974
Prepaid Card	1-800-240-4212	Spanish and English	32,528
AT&T Prepaid	1-800-506-9511	English and Spanish	25,251
AT&T Prepaid	1-800-487-7646	English and Spanish	16,988
Prepaid and Collect Connected by MCI	1-800-226-2727	Spanish	15,942
Prepaid Card	1-800-816-5136	Spanish and English	15,254
Prepaid Card	1-800-216-4008	Spanish and English	13,628
AT&T Prepaid Card	1-800-506-9513	English and Spanish	11,427
Prepaid Card	1-800-719-9589	Spanish	11,007
Prepaid	1-800-562-3612	Spanish	10,515
Walgreens Phone Card Plus	1-877-217-8246	English and Spanish	9,081
Prepaid Card	1-888-246-5951	English and Spanish	7,080
Prepaid Card	1-800-795-8808	Spanish	6,944
Prepaid Card	1-877-671-9053	English and Spanish	5,896
Prepaid Card	1-800-497-1954	Spanish	5,587
Prepaid Card	1-800-569-6973	English and Spanish	5,341
Prepaid Card	1-800-529-1373	English, Spanish, French	3,848
Prepaid Card	1-888-382-3094	English and Spanish	3,762
Prepaid Card	1-888-212-9335	Spanish and English	3,659

<u>Party Called</u>	<u>Number</u>	<u>Language Offered</u>	<u>Number of Calls</u>
Prepaid Card	1-800-240-1039	Spanish	3,194
Prepaid Card	1-800-833-4058	English, Spanish, French	3,168
Target Communications	1-800-625-3044	English and Spanish	3,041
Prepaid Card	1-800-635-5264	Spanish	3,039
K-mart Prepaid Calling Card Sprint	1-800-394-1971	English and Spanish	3,025
Prepaid Card	1-800-323-6269	Spanish	2,531
Teleserve Illinois Dept. of Employment Services Unemployment	1-888-337-7234	English and Spanish	2,453
Prepaid Card	1-800-441-9383	Spanish	2,419
TCS Express Phone Card System	1-888-506-8410	English and Spanish	2,377
AT&T	1-800-981-8331	English and Spanish	1,753
Prepaid Card	1-800-968-9504	Spanish and English	1,584
TCS Express Phone Card System	1-888-508-5658	English and Spanish	1,579
Prepaid Card	1-800-326-3888	Spanish	1,549
Prepaid Card	1-800-827-3132	Spanish	1,505
Prepaid Card / Exclusive Illinois Card	1-800-788-5346	Spanish	1,502
Ameritech	1-800-851-1320	Spanish	1,399
Prepaid Card	1-800-497-1953	English and Spanish	882
Prepaid and Collect	1-800-522-2020	English and Spanish	522
Prepaid Card	1-877-372-1886	English and Spanish	469
Prepaid Card	1-888-321-9287	Spanish	325
AT&T Wireless Services	1-800-888-7600	English and Spanish	228

AVAILABILITY OF TELEPHONE SERVICE

American Households with Telephones				
<u>Household Income</u>	<u>ALL</u>	<u>White Households</u>	<u>Black Households</u>	<u>Hispanic Households</u>
ALL	94.6	95.4	89.7	90.6
Under \$5K	80.3	84.4	71.4	81.1
\$5K-7.49K	83.5	83.6	82.8	80.6
\$7.5K-9.9K	88.1	89.7	82.9	89.2

<u>Category</u>	<u>Households with Telephones</u>
Male-headed households in central cities	85.9
Female-headed households in rural areas	86.8
Rural very poor (incomes under \$5K)	76.7
Native Americans, Eskimos and Aleuts w/ incomes under \$15K	72.3

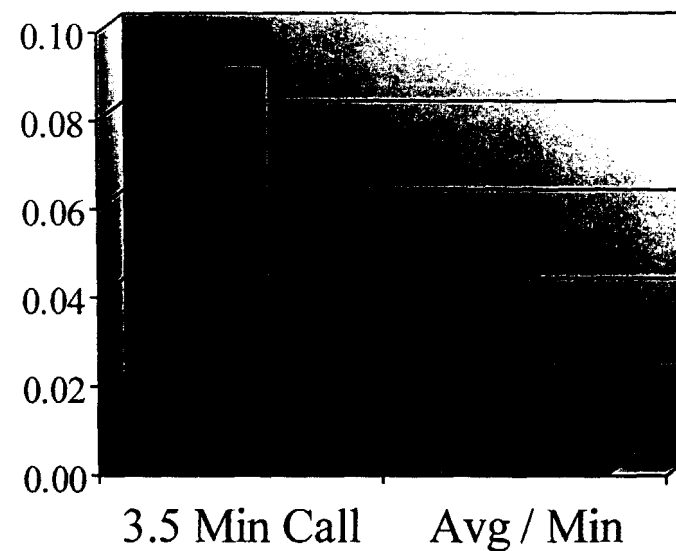
III. Skewed Regulation Distorts Competition

- A. The Commission has correctly and successfully promoted wireless deployment and required cost-based rates for wireless interconnection**
- B. Although payphones compete with wireless, the Commission has not acted to ensure either that rates for payphone interconnection are cost based or that working mechanisms are in place for collecting dial-around compensation -- despite the Congressional mandate**
- C. This increases the pressure to remove payphones**
 - Davel has removed 18,000 payphones, a net reduction of 21%, since December 1998
 - Other PSPs, including ILECs, are removing payphones

Ameritech Michigan

**Payphone vs. Wireless Usage
Rates**

	<u>3.5 Min Call</u>	<u>Avg per Min</u>
Pay Phone Usage	0.08700	0.02486
Wireless Interconnection	0.01369	0.00391



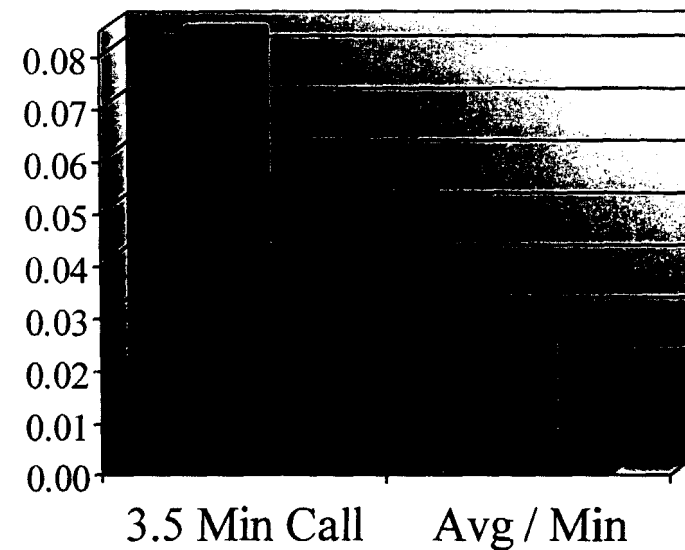
■ Payphone Usage ■ Wireless Interconnection

Data Source: Mike Starkey Telephone Usage Cost/Compensation Comparison with Mobile Telephone Providers (Aug. 2000)

Ameritech Ohio

**Payphone vs. Wireless Usage
Rates**

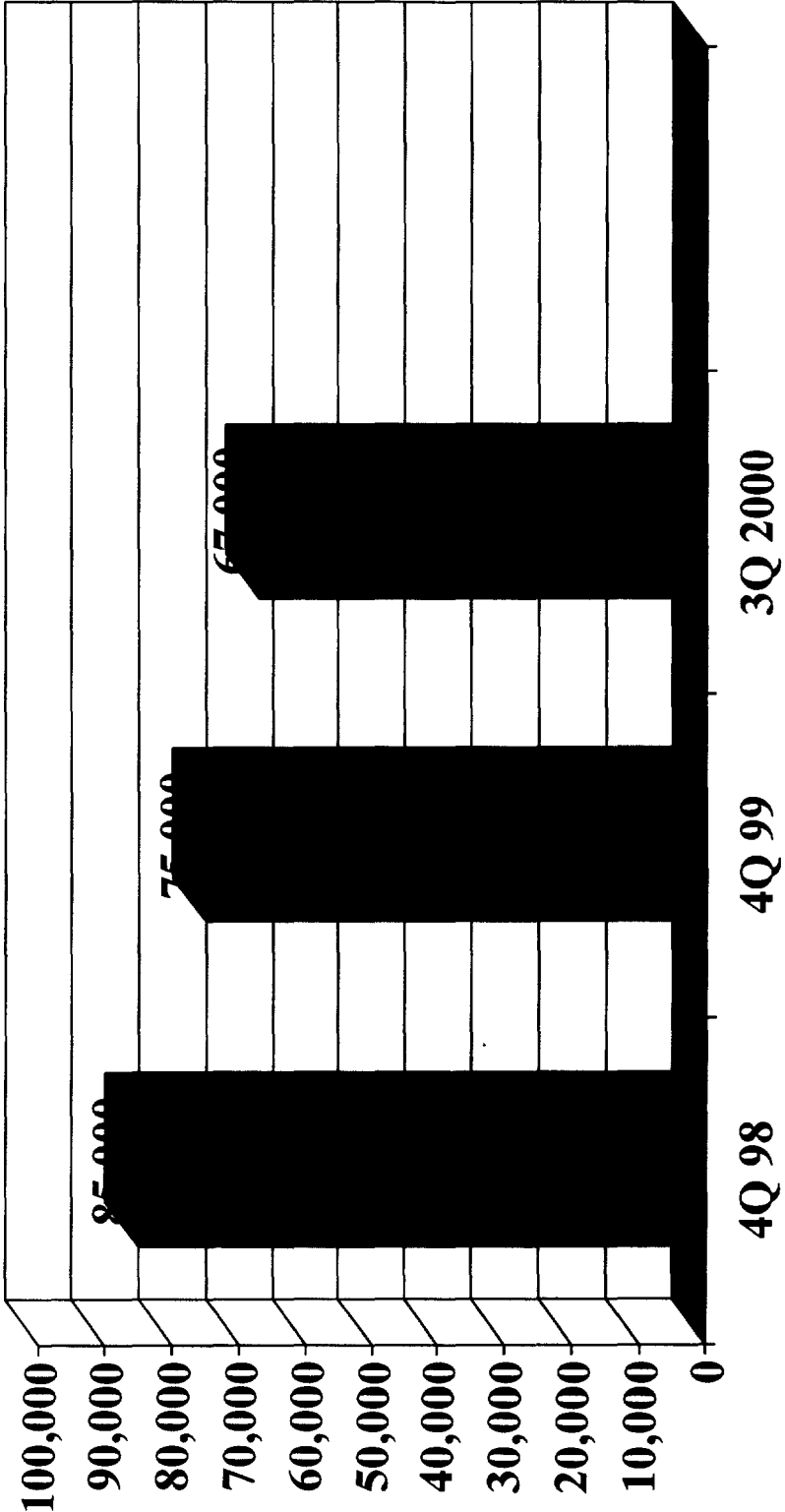
	<u>3.5 Min Call</u>	<u>Avg per Min</u>
Pay Phone Usage	0.08208	0.02345
Wireless Interconnection	0.01642	0.00469



■ Payphone Usage ■ Wireless Interconnection

Data Source: Mike Starkey Telephone Usage Cost/Compensation Comparison with Mobile Telephone Providers (Aug. 2000)

Davel's Payphone Base



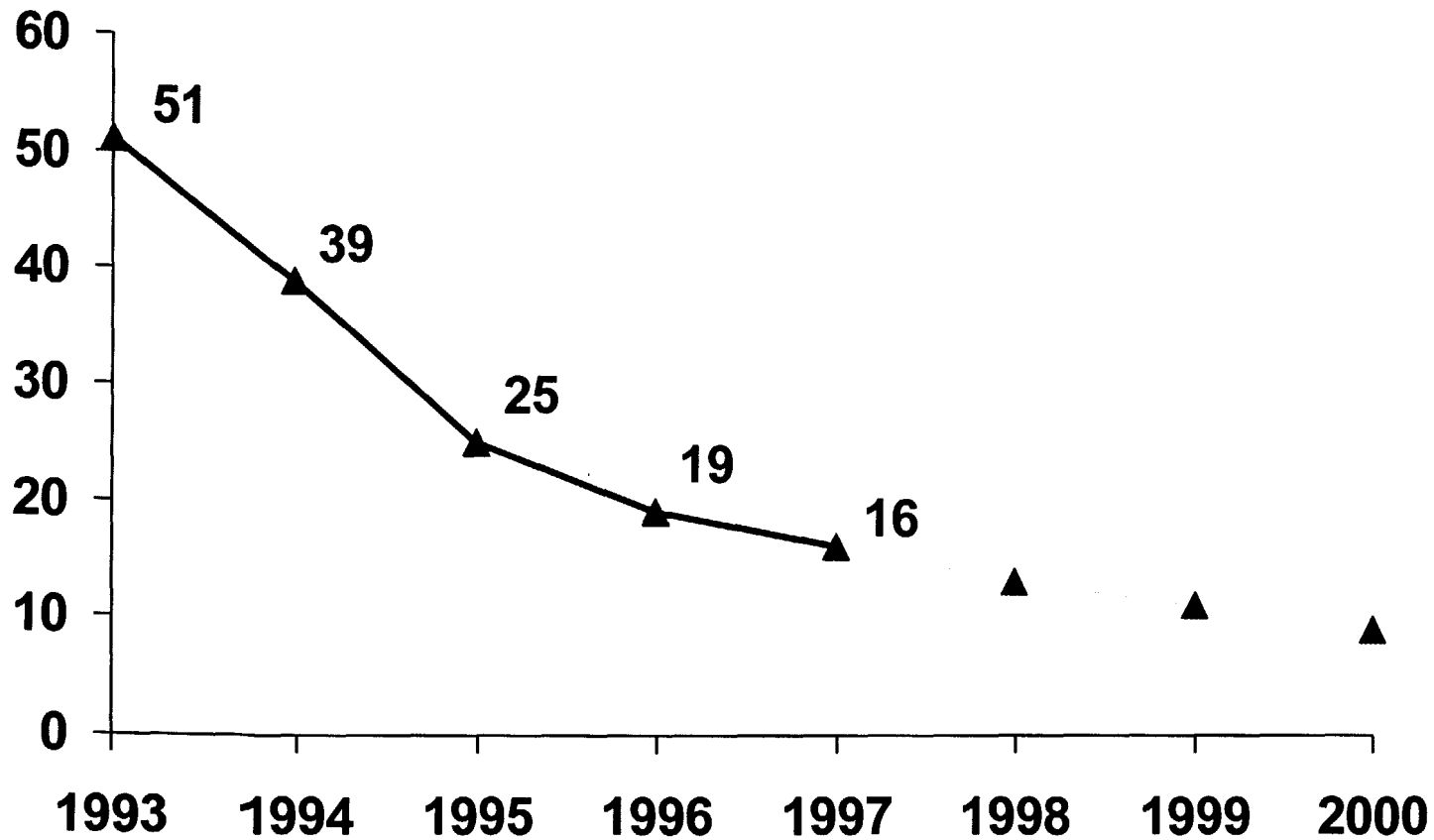
III. Skewed Regulation Distorts Competition (cont'd)

D. Payphone usage patterns have changed

- “0+” calls have all but disappeared
- A declining percentage of payphone calls are coin calls
- An increasing percentage of payphone calls are “dial-around” calls - which should be subject to FCC-prescribed compensation, *of which about 35% are unpaid*

Dramatic Decline in “0+” Calling From Payphones

(Calls Per Payphone Per Month)



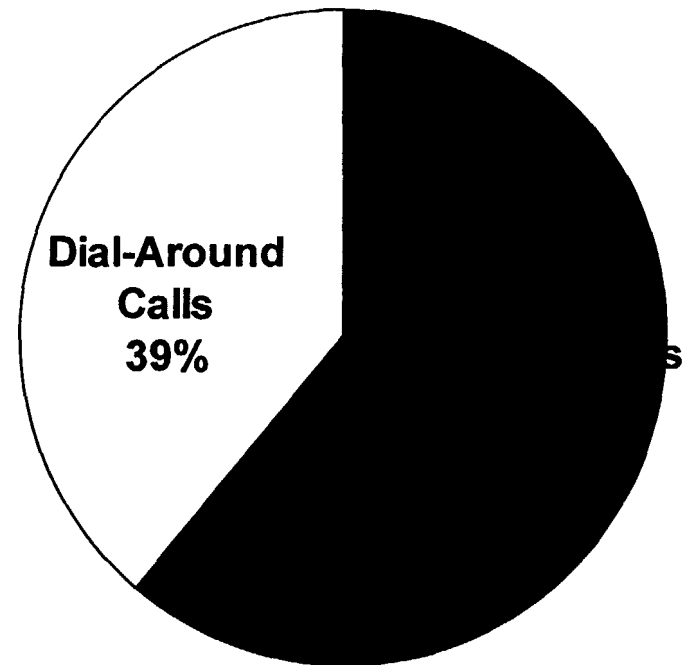
Source: Frost & Sullivan

Composition of Independent Payphone Traffic

1996



1999 - 2000



Source: Independent Payphone Surveys

IV. The FCC Must Fix the Compensation System

- A. Cost basis for the current \$.24 rate assumes PSPs will fully recover their costs by collecting \$.24 on each and every dial-around call**
- B. Because of flaws in the per-call collection system established by the FCC, PSPs collect compensation on only about 65% of calls**
 - In 1996 reconsideration, FCC ruled that when a facilities-based carrier routes a call from a payphone to a switch-based reseller, the reseller pays for the call

IV. Commission Must Fix the Compensation System (cont'd)

B. Because of flaws in the per-call collection systems established by the FCC, PSPs collect compensation on only about 65% of calls (cont'd)

- PSPs must guess identity of the carrier responsible for payment - - many are prepaid card providers with low public profiles
- PSPs must chase hundreds of resellers who hide and/or go bankrupt
- PSPs are paid for only about 65% of calls and are failing to recover costs of an increasing number of payphones
- More and more payphones are removed, depriving the public -- and especially disadvantaged citizens without wireless alternatives -- of adequate deployment of payphone service

IV. The Commission Must Fix the Compensation System (cont'd)

C. PSP collection efforts cannot work under existing rules

- Only 5 % of carriers respond to PSP requests for payment
- APCC has filed 22 collection suits, but it is impossible to find and collect compensation from more than a fraction of carriers
- Facilities-based IXC's give virtually no information useful to identifying which calls the IXC has or has not paid for and/or what carriers are responsible for (and how many) unpaid calls

D. The Commission must simplify the payphone collection system

- Adopt immediate, partial solution: Clarify that existing rules require facilities based carriers to identify the responsible payer for every call
- Commit to complete solution: Quickly amend rules to simplify collection of compensation
 - All compensation to be paid by the “first-switch” carrier

V. The FCC Must Enforce its Mandate for Cost Based Payphone Interconnection Rates

A. In the 1996 *Payphone Order*, FCC required ILECs' State-tariffed payphone interconnection rates to meet Federal "new services test" cost based rates standard

- Authorized by Section 276
- Rates are currently at issue in at least 15 State PSC and court proceedings
- Most States have yet to address the issue in the absence of Federal guidance
- Other States have misapplied the FCC's requirement

V. The FCC Must Enforce its Mandate for Cost Based Payphone Interconnection Rates (cont'd)

B. The FCC must explain and enforce the standard

- States have followed widely varying interpretations
 - In South Carolina the PSC ruled that the cost based monthly rate level is \$25.49 (the pre-existing average monthly BellSouth rate was \$64.09)
 - In North Carolina the PSC summarily concluded that the existing \$51.60 average monthly rate is “reasonable”
- Common Carrier Bureau efforts to explain the scope of the requirement have been perverted by ILECs
- Request for FCC ruling has been pending for 2 1/2 years
- Chairman Kennard has stressed: “If you write a rule, you have to muster the resources and the will to enforce it.” *Defining Vision* (July 15, 1999)

V. The FCC Must Enforce its Mandate for Cost Based Payphone Interconnection Rates (cont'd)

C. FCC has mandated “cost based” ILEC interconnection rates for both payphones and wireless service, but so far cost based rates have been implemented only for wireless

- PSPs and wireless providers compete to sell interconnected minutes on ILECs wireline networks
- ILEC network usage rates for PSPs are frequently 5-6 times as high as rates for wireless providers
- Skewed implementation of “cost-based” rates is arbitrarily picking “winners” and “losers” in payphone-wireless competition
- “We must continue to ensure that the momentum toward competitive markets moves forward on a technology-neutral basis...” Chairman Kennard’s *Draft Strategic Plan for the 21st Century* (August 12, 1999)

V. The FCC Must Enforce its Mandate for Cost Based Payphone Interconnection Rates (cont'd)

D. Payphone interconnection charges are often 20-25% of payphone costs. Eliminating the disparity between wireless and payphone interconnection rates would remove one of the largest barriers to retention and deployment of payphones

E. The primary vehicle for a solution is the pending proceeding on Wisconsin payphone interconnection rates

- The FCC must provide a fully articulated decision setting forth for state commissions how to apply the federal new services test to achieve cost based rates
- The Federal new services test applies to every element of payphone line service, including local usage
- PSPs are competitors of the ILEC payphone divisions, not business users. As competitors, PSPs are entitled to cost based rates, without excessive overheads that subsidize other ILEC services

VI. Conclusion

- The Commission should clarify that existing dial-around compensation rules require facilities based carriers to identify the responsible payer for every call
- The Commission should commit to quickly amending the dial-around compensation rules to require the “first-switch” carrier to pay the compensation
- Promptly issue definitive guidance to State PSCs on the application of the Federal cost based rate requirement to all elements of payphone interconnection rates